

*Summa, J*

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DATE FILED: 12/01/2014

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DANNY COLON,

Plaintiff,

**STIPULATION AND  
ORDER OF DISMISSAL**

-against-

12 CV 9205 (JMF)

THE CITY OF NEW YORK; THE NEW YORK CITY  
HOUSING AUTHORITY; JAMES THEIS, a former detective  
employed by the New York City Police Department,  
MICHAEL CODELLA (aka "Rambo"), a former detective  
with the New York City Housing Authority Police Department,  
and JOHN DOE Nos. 1 through 5 (whose identities are  
currently unknown but who are known to have been detectives  
and supervisors with the New York City or the New York City  
Housing Authority Police Departments), as individuals and in  
their official capacities,

Defendants.  
-----X

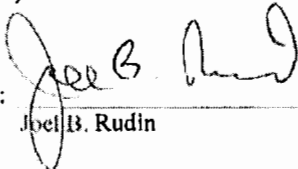
WHEREAS, the parties have reached a settlement agreement and now desire to  
resolve the remaining issues raised in this litigation, without further proceedings and without  
admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by  
and between the undersigned, that

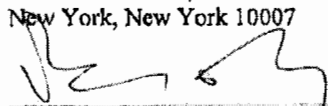
1. The above-referenced action, including cross-claims, is hereby dismissed with  
prejudice; and

2. Notwithstanding the dismissal of this action in accordance with this agreement, the District Court shall continue to maintain jurisdiction over this action for the purpose of enforcing the terms of the settlement agreement reached between the parties and set forth in the Stipulation of Settlement executed by the parties in this matter.


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By:   
Joel B. Rudin


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By:   
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*Assistant Corporation Counsel*

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(212) 490-3000

By:   
Patrick J. Lawless

RONALD P. BERMAN  
Attorney at Law  
Attorney for Defendant  
MICHAEL CODELLA  
14 Wall Street -- 30<sup>th</sup> Floor  
New York, NY 10005  
(212) 422-1414

By:   
Ronald P. Berman

SO ORDERED:



Dated: New York, New York  
December 1, 2014

HON. JESSE M. FURMAN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

DANNY COLON,

Plaintiff,

-against-

**STIPULATION OF  
SETTLEMENT**

12 CV 9205 (JMF)

THE CITY OF NEW YORK; THE NEW YORK  
CITY HOUSING AUTHORITY; JAMES THEIS, a  
former detective employed by the New York City  
Police Department, MICHAEL CODELLA (aka  
"Rambo"), a former detective with the New York City  
Housing Authority Police Department, and JOHN  
DOE Nos. 1 through 5 (whose identities are currently  
unknown but who are known to have been detectives  
and supervisors with the New York City or the New  
York City Housing Authority Police Departments), as  
individuals and in their official capacities,

Defendants.

-----X

**WHEREAS**, plaintiff commenced this action by filing a complaint on or about  
December 2012, alleging that the defendants violated plaintiff's federal civil rights and caused  
him physical injury and illness; and

**WHEREAS**, defendants have denied any and all liability arising out of plaintiff's  
allegations, including any and all liability alleged by and between defendants; and

**WHEREAS**, the parties now desire to resolve the issues raised in this litigation,  
without further proceedings and without admitting any fault or liability; and

**WHEREAS**, plaintiff has authorized his counsel to settle this matter on the terms  
set forth below;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by  
and between the undersigned, as follows:

1. The above-referenced action, including cross-claims, is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees except as specified in paragraph "2" below.

2. Defendant City of New York hereby agrees to pay plaintiff Danny Colon the sum of Two Million Five Hundred Thousand (\$2,500,000.00) Dollars in full satisfaction of all claims against the City of New York and James Theis related to his prosecution in *People v. Daniel Colon and Anthony Ortiz*, Index No. 11073/90 (NY Co.). This is inclusive of costs, expenses and attorneys' fees incurred in connection with this Action. In consideration for the payment of this sum, plaintiff agrees to dismissal of all the claims against defendants City of New York and James Theis and to release the defendants and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiff's civil rights and any and all related state law claims, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiff shall execute and deliver to defendant City of New York's attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph 2 above and an Affidavit of Status of Liens. Prior to tendering the requisite documents to effect this settlement, Medicare-recipient plaintiffs must obtain and submit a final demand letter from Medicare for the reimbursement of any conditional payments made by Medicare for any injury or condition that is the subject of this lawsuit. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26.

4. It is further stipulated and agreed by and between the parties that, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), all claims and cross-claims against defendants New York City Housing Authority and Michael Codella are voluntarily dismissed with prejudice and without costs, and plaintiff hereby agrees to release defendants New York City Housing Authority and Michael Codella and any present or former employees and agents of the New York Housing Authority from any and all liability, claims, or rights of action arising from the allegations of a violation of plaintiff's civil rights in this action and any and all related state law claims, including claims for costs, expenses, and attorneys' fees.

5. The City of New York, James Theis, New York City Housing Authority and Michael Codella agree pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) to dismiss with prejudice any and all alleged cross-claims by and between them and agree to release the defendants and any present or former employees and agents of the City of New York or the New York Housing Authority, or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action arising from the allegations of a violation of plaintiff's civil rights in this action and any and all related state law claims, including claims for costs, expenses, and attorneys' fees.

6. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. This stipulation shall not be admissible in any other litigation or settlement negotiations, except to enforce the terms of this agreement.

7. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York, the New York City Housing Authority, or any agency thereof.

8. Plaintiff agrees to hold harmless defendants regarding any liens or past and/or future Medicare payments, presently known or unknown, in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendants reserve the right to issue a multiparty settlement check naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

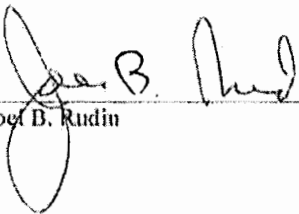
9. In addition to this settlement, *Ortiz v. State of New York*, Claim No. 121781 (N.Y. Court of Claims) (Scuccimarra, J.), and *Ortiz v. City of New York, et al.*, Ind. No. 400063/14 (Supreme Court, New York County) (Freed, J.S.C.), are also settled.

10. This Stipulation of Settlement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation of Settlement regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or

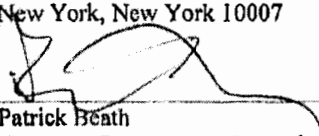
to vary the terms and conditions contained herein.

Dated: New York, New York  
Nov. 25, 2014

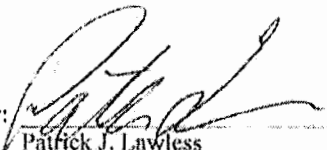
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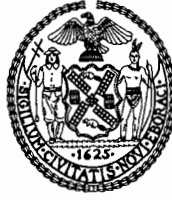
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November 26, 2014

**BY EMAIL TO THE ORDERS AND JUDGMENTS CLERK**

Honorable Jesse M. Furman  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

*Re: Colon v. City of New York, et al., 12 CV 9205 (JMF)*

Your Honor:

I represent defendants City of New York and James Theis in the above-referenced matter and write on behalf of all parties to respectfully request that Your Honor endorse the Stipulation and Order of Dismissal provided herewith. In accordance with Your Honor's Individual Rules of Practice, I am also submitting, again on behalf of all parties, the Stipulation of Settlement in this matter. The parties thank the Court for its time and consideration herein.

Respectfully submitted,

/s/

Patrick Beath,  
*Assistant Corporation Counsel*

Enc.

cc: Joel B. Rudin, Esq.  
Patrick Lawless, Esq.  
Ronald Berman, Esq.  
(by ECF)